IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.179 OF 2007
WITH
CIVIL APPLICATION NO.389 OF 2007

Dattu Ganpati Shinde. ..Appellant.

V/s.

Pralhad Bala Nikam(deceased)
by heirs & L.Rs. ..Respondents.

Mr.Uday Warunjikar for appellant.

Mr.K.Y.Mandlik for respondent Nos.1A to 1C.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 24, 2007.

P.C. :

1. Pursuant to the liberty granted under order dated 9th July, 2007, the Appellant has produced certified copy of the plaint, written statement and related documents. After having gone through the said documents, in particular, the averments in the plaint, I find substance in the argument of the Respondents that the suit, as filed by the Plaintiff is simplicitor between the landlord and tenant(lessor and lessee). The Respondents have rightly pointed out from the memo of the plaint that the suit has been valued only for Rs.12/-(Rupees Twelve only) being twelve months rent value and proceeded as landlord tenant dispute.

2. The Court below has addressed the issues on the basis of that claim of the Plaintiff. In that suit, as the Defendant had asserted that he was occupying the suit property in his own right, in the context of that claim certain observations are found in the Judgment under challenge. That cannot be the basis to hold in favour of the Appellant/Plaintiff that the suit was for possession on the basis of title as such. The claim of the Defendants whether he is occupying the suit property in his own right can be addressed on its own merits only if the Plaintiff were to institute the suit for possession on the basis of title.

3. For the present proceeding, it would have been suffice for the Court below to consider the issue whether there is existence of relationship between the parties that of lessor and lessee. That issue having been answered against the Plaintiff, the suit obviously should fail. The fact that the Plaintiff claims to be the owner of the suit property and which claim is not disputed by the Defendants cannot be the basis to dispossess the Defendants, who claim to be in occupation of the suit property in their own rights by virtue of Sanad and also on the

plea of adverse possession. Those aspects can be and ought to be tested only if the Plaintiff were to file suit for possession on the basis of title.

4. As mentioned earlier, the present claim is simlicitor suit for possession on the assertion that the there existed relationship of lessor and lessee between the parties. That issue has been rightly answered by the Court below. For which reason, no interference is warranted.

5. No substantial question of law arises for consideration. Hence dismissed.

6. In view of this Order, nothing survives for consideration in the Civil Application. Hence the same is disposed of accordingly.

(A.M.KHANWILKAR,J)